

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

CRIMINAL ACTION NO. 2:15-cr-00124

CHADWICK LUSK,

Defendant

**DEFENDANT'S MEMORANDUM IN RESPONSE
TO THE COURT'S ORDER OF NOVEMBER 18, 2015 (#36)**

The defendant, Chadwick Lusk, by counsel, Thomas W. Smith, hereby responds to this Court's order of November 18, 2015 (#36) as follows:

1. To the extent that the government's position is that the existence of a fiduciary duty, combined with intentional acts violative of such duty, satisfies element number one of the *Vineyard* test, the defendant agrees.
2. As to element number two of the *Vineyard* test, the defendant acknowledges that Mingo Logan Coal Company's economic well-being was negatively affected to the extent of having paid more for crib blocks than would otherwise have been the case, as reflected in the amounts that Gary Roerer paid the defendant from the proceeds of such transactions.
3. The defendant agrees that at all times relevant to the information in this matter that:
 - a.) He was the purchasing manager for the Mountain Laurel Mining complex, which was owned by Mingo Logan Coal company.
 - b.) In his position as purchasing manager, the defendant acted as an agent of Mingo Logan Coal company, and had a fiduciary duty to the company.

- c.) At the time the defendant contracted with CM Supply Company for crib blocks, CM Supply had submitted the lowest bid therefor.
- d.) When Mr. Roerer, the owner and operator of CM supply Company, offered and gave the defendant a portion of the proceeds from the sale of the crib blocks, the defendant knowingly failed to apprise his employer of same, and he retained the money therefrom for his personal use.
- e.) Consistent with the amounts of money given the defendant and retained by him, it was reasonably foreseeable that CM Supply would have continued to sell crib blocks to Mingo Logan Coal Company at a rate below the contract price, or that Mingo Logan Coal Company could have received rebates. This was detrimental to the company's economic well-being.

Respectfully submitted,

CHADWICK LUSK
By counsel

/s/Thomas W. Smith, Esq.
W.Va. Bar # 3490
Attorney at Law, PLLC
405 Capitol Street, Suite 701
Charleston, WV 25301
Tel: 304-340-9911
Fax: 304-340-9915
tomsmithwv@gmail.com